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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,007	10/24/2003	William C. Phillips	1023-284US01	9366

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EXAMINER	
MANUEL, GEORGE C	

ART UNIT	PAPER NUMBER
3762	

DATE MAILED: 04/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/693,007	PHILLIPS ET AL.	
	Examiner	Art Unit	
	George Manuel	3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-45 is/are pending in the application.

4a) Of the above claim(s) 1-22 is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 23-45 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 10/12/04, 9/8/05.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☒ Other: 10/13/05, 12/14/05, 7/2/04.

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-22, drawn to a method for assembling a programmer for a medical device, classified in class 257, subclass E21.001.

II. Claims 23-45, drawn to a programmer for a medical device, classified in class 607, subclass 30.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the process as claimed can be used to make another and materially different product. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Steven J. Shumaker on 3/23/06 a provisional election was made without traverse to prosecute the invention of II, claims 23-45. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-22 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 23-28, 34, 35, 38-44 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Mumford et al '360.

Mumford et al disclose a first circuit board comprising alpha numeric display 16, and a second circuit board comprising touch sensitive switch matrix overlay 18. The examiner is interpreting substrate 20 to comprise a second housing member and the structure comprising 24a to comprise a loading port and 20a to comprise a plate member.

Regarding claim 26, the examiner is interpreting circuit board 16 to include telemetry circuitry in unit 88 to be adapted to function with programming head 12.

Regarding claim 27, display 36 comprises a liquid crystal display.

Regarding claim 28, the examiner is interpreting microprocessor 88 to comprise circuitry to drive the telemetry circuitry comprising head power switch 92 and display circuitry 18.

Regarding claim 39, FIG. 4 shows the overlay 18 being comprised of a plurality of flexible transparent sheets.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 29, 36 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mumford et al '360.

Power for the programming head is provided via the head power switch 92 controlled by the microprocessor system and the high current required for the magnetic coil 60 is provided separately via a mag coil lever 94 located in the console 10. One of ordinary skill in the art would have found it obvious to disable the display18 during telemetry to conserve battery energy from battery packs 76.

Regarding claim 36, one of ordinary skill in the art would have found it obvious to use a clothing attachment to fix the position of device 12 to the patient so the operator can use his/her hands for providing other patient assistance.

Regarding claim 45, one of ordinary skill in the art would have found it obvious to provide an infrared interface for the touch screen because it is well known to use the thermal heat of a programmers fingers for touch screen programming.

Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mumford et al '360 in view of Wescott '432.

Mumford et al disclose a data entry port comprising alpha numeric keying and touch screen 16 and 18. One of ordinary skill in the art would have found it obvious to use the JTAG teaching of Wescott to adapt the port of Mumford et al with a JTAG port to calibrate the device of Mumford et al.

Claims 30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mumford et al '360 in view of Kurjenheimo et al '412 .

Mumford et al show all of the features except for housing an internal antenna. One of ordinary skill in the art would have found it obvious to use the compact housing teaching of Kurjenheimo et al to self-contain the circuitry of Mumford et al for ease of manufacture and portability.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Manuel whose telephone number is (571) 272-4952.

George Manuel
Primary Examiner